

## MORRISON TENENBAUM

MORRISON-TENENBAUM PLLC, ATTORNEYS-AT-LAW M-T-LAW.COM  
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January 9, 2023

Via ECF

Hon. Philip Bentley  
United States Bankruptcy Court Judge  
Southern District of New York  
United States Bankruptcy Court  
One Bowling Green  
New York, NY 10004

Re: In re Symbiont.io LLC, 22-11620-PB

Dear Judge Bentley:

We represent Symbiont.io LLC, the Debtor in the above-reference chapter 11 case. We write in further response to the Motion for Relief From the Automatic Stay [Dkt. No. ] presently scheduled for tomorrow, January 10, 2023, at 10:00 a.m.

The Debtor recognizes that briefing on the matter is closed and that the Debtor does not have right to file any pleadings in furtherance of its response to same. However, the Debtor feels compelled to bring to the Court's attention recent developments that serve to change the complexion of this case and certainly bear on tomorrow's proceedings.

LM Funding America Inc. ("LMF") claimed in its reply that the value of its collateral was diminishing in part based on testimony given regarding the Debtor's receivables at its Section 341 meeting. However, after the 341 meeting, the Debtor reached agreement with two customers on invoices issued in late December that will \$370,000 for the estate in the next thirty days. While each customer previously indicated that it would need time to satisfy the invoices, each customer has now reversed course and each will be making payment as early as this week, but no later than end of month. Copies of each invoice are annexed hereto as Exhibit A. Given LMF's reliance on the 341 testimony, the Debtor felt it was critical to present these invoices as evidence that the Debtor remains a viable enterprise.

More importantly, though, is that the Debtor today reached an agreement with a counterparty for a strategic transaction that will (i) resolve the Debtor's near-term liquidity needs, and (ii) create the path to a plan of reorganization that will pay all its creditors in full. Attached hereto as Exhibit B is a term sheet signed today between the Debtor and Morse Labs Inc. ("Morse") whereby Morse will acquire 66.67% of the equity interests in the Debtor. Morse Labs is an existing licensee of Symbiont and has a tech team that has been working with the Symbiont team for approximately two (2) years. They are well versed in the technology and applications. As such, Morse brings with it technical expertise, access to its own customer base, and a complimentary set

of products, which makes them an ideal strategic partner to grow the Debtor following the conclusion of this proceeding.

In connection with this transaction, Morse has agreed to be the lead arranger for a \$6 million financing facility. The first tranche of that financing (approximately \$2,500,000) will be used by Morse to either acquire or permit the Debtor to repay LMF in full. In either case, Morse will be in a position to resolve LMF's debt by January 24, 2023. Far from a toothless promise, Morse has deposited 10% of the first tranche into Morrison Tenenbaum's client trust account as a show of good faith. Over the next few days, the Debtor will finalize agreements for the financing facility and will be back before the Court on a motion to approve the first tranche. The course of these discussions will likely also obviate the Debtor's motion to dismiss and permit the Debtor to seek the forms of relief ordinarily sought in connection with an operation company bankruptcy case. This transaction changes the game.

I thank the Court for its kind attention in this matter. Should the Court have any questions or require anything further, please do not hesitate to contact our office.

Respectfully,

/s/ Lawrence Morrison  
Lawrence Morrison

Cc: All counsel of Record via ECF

## EXHIBIT A

**Symbiont.io, LLC**

64 Bleeker Street, #165

New York, NY 10012 US

646.710.7660

finance@symbiont.io

www.symbiont.io

**Invoice SFT - 002****BILL TO**

SWIFT SC

Avenue Adèle, 1

B - 1310 La Hulpe

BELGIUM

DATE  
12/19/2022PLEASE PAY  
**\$105,000.00**DUE DATE  
01/18/2023

DATE	ACCOUNT SUMMARY	AMOUNT
05/19/2022	Balance Forward	35,000.00
	Other payments and credits after 05/19/2022 through 12/18/2022	-35,000.00
12/19/2022	Other invoices from this date	0.00
	New charges (details below)	105,000.00
	Total Amount Due	105,000.00

DESCRIPTION	AMOUNT
SOW - Corporate Actions Digital Ledger Technology Innovation Sprint	105,000.00
Master Service Agreement NoC019248	
Annexure No:A0194248001	
V.A.T. Reg. BE 0413.330.856	
SWIFT point of contact - Nick Kerigan (United Kingdom)	
	SUBTOTAL
	TAX
	TOTAL
	TOTAL OF NEW CHARGES

TOTAL DUE	<b>\$105,000.00</b>
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THANK YOU.

To pay by Wire:  
 SYMBIONT.IO LLC  
 Routing #:026013576  
 Account Number: 1504919389  
 Signature Bank  
 1400 Broadway, 26th Fl,  
 New York, NY 10018

Mailing address : 64 Bleeker Street #165, New York, NY 10012

Tax ID: 46-4731669

**Symbiont.io, LLC**

64 Bleeker Street, #165

New York, NY 10012 US

646.710.7660

finance@symbiont.io

www.symbiont.io

**Invoice SS - 001**

BILL TO	SHIP TO	DATE	PLEASE PAY	DUE DATE
Accounts Payable State Street Bank and Trust Company PO Box 219752 Kansas City, MO 64121	Dixon, Joseph P State Street Bank and Trust Company One Lincoln St. Boston,MA,02111 PHONE: 617-664-4032 EMAIL: JPDixon@StateStreet.com	12/19/2022	<b>\$265,625.00</b>	12/19/2022

DESCRIPTION	AMOUNT
Req 600167078, GPS 40904, Software and Application Layer - Start date:11/10/2022 and End 11/10/2023	250,000.00T
PO : 100159117	SUBTOTAL 250,000.00
Referencing Agreement Number 100159150	TAX 15,625.00
Fully Executed SOFTWARE ORDER FORM No. 1, Dated : November 10, 2022. Governed by the Software License and Services Agreement as of November 10, 2022.	TOTAL 265,625.00
Sales tax has been charged @6.25%	TOTAL DUE <b>\$265,625.00</b>

THANK YOU.

To pay by Wire:  
 SYMBIONT.IO LLC  
 Routing #:026013576  
 Account Number: 1504919389  
 Signature Bank  
 1400 Broadway, 26th Fl,  
 New York, NY 10018

Mailing address : 64 Bleeker Street #165, New York, NY 10012

Tax ID: 46-4731669

## EXHIBIT B

**MORSE LABS, INC.**  
**400 S COLORADO BLVD. SUITE 800**  
**DENVER, CO 80246**

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January 9, 2023

Symbiont.io. Holdings, Inc.

**RE: Letter of Intent**

Ladies and Gentlemen:

This non-binding letter (this "Letter"), upon acceptance, will evidence our mutual intent to enter into an agreement or agreements pursuant to which Morse Labs, Inc., a Delaware corporation, or an affiliate ("Morse"), will acquire a majority equity interest (the "Transaction") in Symbiont.io Holdings, Inc., a Delaware corporation (together with its affiliate Symbiont.io, LLC, a Delaware limited liability company, "Symbiont" or the "Company") by merging with and into Symbiont, with Symbiont surviving (the "Surviving Corporation").

This Letter shall also serve as an expression of the intention of Morse and the Company to proceed expeditiously to negotiate, draft and execute a definitive agreement relating to the Transaction and such other ancillary agreements or instruments as the parties may determine (hereinafter referred to as the "Definitive Agreements"). The Definitive Agreements, when executed, will reflect the terms of this Letter and such other terms and conditions as are typical of a transaction of this nature. The following is a summary of certain principal terms and conditions of the proposed Transaction:

**1. Transaction; Symbiont Recapitalization; Symbiont DIP Financing**

The parties have agreed upon a valuation of the Company at \$25,000,000 (the "Symbiont Transaction Value") and of Morse at \$50,000,000. At the closing of the Transaction (the "Closing"), Symbiont will issue Morse's sole stockholder shares of Symbiont common stock equal to 66.67% of the outstanding shares of Symbiont Common Stock on a fully diluted basis as of the Closing, with holders of Symbiont Series A Preferred Stock, Series A-1 Preferred Stock and Series B Preferred Stock (collectively, "Series A/B Preferred Stock") owning the remaining 33.33% of the Common Stock on a fully-diluted basis as of the Closing.

IT IS CURRENTLY CONTEMPLATED THAT THE TRANSACTION WILL BE DOCUMENTED THROUGH A JUDICIALLY APPROVED AGREEMENT AND PLAN OF REORGANIZATION PROVIDING FOR PAYMENT OF ALL CREDITORS IN FULL THROUGH THE PLAN. IN THE EVENT THAT THE BOARD OF SYMBIONT DETERMINES IT TO BE ADVISABLE AND IN THE BEST INTEREST OF SYMBIONT AND ITS STAKEHOLDERS TO WITHDRAW ITS CHAPTER 11 BANKRUPTCY PETITION, THE

TRANSACTION WILL BE SUBJECT TO THE APPROVAL OF SYMBIONT'S STOCKHOLDERS IN ACCORDANCE WITH THE SYMBIONT CHARTER.

The Transaction will constitute a Deemed Liquidation Event under Symbiont's certificate of incorporation currently in effect (the "Symbiont Charter"), and the valuation of Symbiont is less than the aggregate liquidation preference for shares of Symbiont's Series B Preferred Stock. Accordingly, holders of Common Stock and Series Seed Preferred Stock of Symbiont Inc. shall not receive any part of the Symbiont Transaction Value.

(a) Notwithstanding the existing Series B Preferred Stock liquidation preference, it will be a condition of Closing that the outstanding shares of Symbiont capital stock be recapitalized as follows into shares of Symbiont Common Stock:

(i) Symbiont Stockholders investing in the Bridge Transaction (as defined below) will receive shares equal to \$3.00 of the Symbiont Transaction Value for each \$1.00 invested in the Bridge Transaction (\$1.00 in Bridge Transaction repayment and \$2.00 in additional consideration);

(ii) Symbiont Stockholders investing in the Equity Financing (as defined below) will receive in addition to shares issued as part of the Equity Financing, shares equal to \$1.00 of the Symbiont Transaction Value for each \$1.00 invested in the Equity Financing as additional consideration;

(iii) Holders of Series A/B Preferred Stock will receive the balance of the Symbiont Transaction Value after allocations pursuant to (i) and (ii) above.

(b) As additional incentive to Symbiont, for each \$1.00 of revenue received by Symbiont LLC by third parties for the license and/or sale of Symbiont's products and services between the Closing and April 30, 2023, the holders of Series A/B Preferred Stock shall receive additional shares of Symbiont Common Stock as a dollar for dollar increase in the Symbiont Transaction Value. By way of example, if Symbiont receives \$2,500,000 of such license revenue, the Symbiont Transaction Value will be deemed increased to \$27,500,000 (i.e., a 10% increase), and Symbiont will grant an additional 3.33% of Symbiont Common Stock to the holders of Series A/B Preferred Stock in May 2023.

(c) As a condition to Closing, and in light of Symbiont's need for capital to fund ongoing operations and to pay obligations to its secured lender, Morse will enter into a financing transactions to provide for (i) either through the acquisition of the secured loan held by LM Funding or through the issuance of new indebtedness and a payoff of the secured loan, and (ii) lending the necessary funds to Symbiont to maintain its operations and pay post-petition indebtedness through the consummation of the Plan (the "Bridge Transaction"). The Bridge Transaction shall be documented in the form a secured loan at 12% annual interest and shall provide for \$2.5M in committed and available funds by January 24, 2023 (the "First Tranche"), and up to \$6M in additional funds through the balance of the chapter 11 case.

(d) Simultaneously with the negotiation of the Definitive Agreement, Morse and Symbiont will initiate an equity financing process to fund the ongoing operations of the surviving company after the Closing (the "Equity Financing"). The Equity Financing will be targeted at up

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to \$12-15M (including the proceeds of the Bridge Transaction). Such target amount may be reduced by any revenue committed to Symbiont in accordance with clause (b) above. Morse and Symbiont currently contemplate a pre-money valuation of \$75M for the Surviving Corporation (not giving effect to a contemplated 20% post-Equity Financing equity incentive pool).

## **2. Representations and Warranties; Liability for Breach; Structure**

The Company and Morse will make full representations, warranties and covenants customary for transactions of this nature.

Recourse for breach will be limited in time and amount to a clawback mechanism that is customary for transactions of this nature.

The parties will work together during the negotiation of definitive agreements to determine a mutually agreeable tax efficient structure.

## **3. Employment Matters**

Symbiont has currently furloughed approximately 30 employees expected to continue with the Surviving Corporation. Such employees are expected to be reinstated with salary contemplated to be retroactive to January 1, 2023.

## **4. Board of Directors**

Following consummation of the Transaction, the Board of the Surviving Corporation is expected to be five members – two Morse designees, one Symbiont designee, one new investor designee and one independent director.

## **5. Conditions**

The following shall be additional conditions to Closing of the Transaction:

Execution of a payoff letter (or similar court order) from LM Funding America, Inc. (“LMF”), evidencing full satisfaction of all obligations to LMF pursuant to the \$2M secured note currently held by LMF.

The final transaction shall be consummated through the confirmation of a plan of reorganization.

## **6. Expenses**

Whether or not the Transaction is consummated, each party shall bear its own cost and expenses, including without limitation, attorneys’ fees and expenses.

## **7. Termination**

This Letter may be terminated by the Company or Morse upon written notice to the other party unilaterally, for any reason or no reason, with or without cause, at any time; provided, however, that the termination of this Letter shall not affect the liability of a party for breach of any

of the Binding Provisions (as defined below). Upon termination of this Letter, the parties shall have no further obligations hereunder, except as stated in paragraphs 9 (Non-Disclosure), 10 (No Brokers) and 11 (Expenses), which shall survive any such termination.

#### **8. Governing Law**

This Letter shall be governed by and construed in accordance with the internal laws of the State of Delaware, without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction).


It is understood and agreed that this Letter is a summary of certain principal terms of the proposal intended to be included in the Definitive Agreements and shall, with the exception of paragraphs 6 (Expenses), 7 (Termination), and 8 (Governing Law) (the “Binding Provisions”), be non-binding on the parties. Except as set forth in the Binding Provisions, no party shall be required to take any further action, nor shall any liability attach, if either the Company or Morse elects to discontinue negotiating with regard to the proposed Transaction before the Definitive Agreements are negotiated and executed. Other than with respect to the Binding Provisions, a binding commitment with respect to the Transaction contemplated by this Letter will result only if Definitive Agreements are executed and delivered, and then, only subject to the terms and conditions contained therein. It is our desire to move expeditiously towards the completion of the Transaction on the basis of the terms and conditions contained herein. To help accomplish this goal, if you are in agreement with the foregoing, would you please indicate by signing and returning the attached copy of this Letter to me. This Letter may be executed in counterparts and delivered electronically, by fax or .pdf, each of which shall be deemed to be an original, and all of which, when taken together, shall constitute one and the same letter.

{Signature Page Follows}

This Letter shall expire on January 10, 2023 at 5:00 P.M. Eastern Time if not countersigned before then, unless extended in writing.


Very truly yours,

MORSE LABS, INC.

By:   
Name: Mark Haden  
Title: Vice President

Agreed to and Accepted as of January 9, 2023:

SYMBIONT.IO HOLDINGS, INC.

By:   
Name: Mark Smith  
Title: Chief Executive Officer

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